IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 12919 of 2005(K)

PETITIONER:

PARAYIL THENGAL ABDUL AZEEZ,
AGED 44 YEARS, S/O. MUHAMMED HAJI, "IZZATH",
CHERUKAVU AMSOM, SAYAMKANDAM, PULIKKAL POST,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.M.ABDUL LATHEEF
SMT.P.RESHMA KABIR

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. ASSISTANT EDUCATIONAL OFFICER,
KONDOTTY.

4. VADAKKEGARA ANSWAR SADATH,
S/O. ALI MASTER, KULATHOOR, POST THURAKKAL,
VIA. KONDOTTY, MALAPPURAM DISTRICT.

ADDL. 5. SIVADASAN, TEACHER-IN-CHARGE, A.L.P. SCHOOL,
CHERUKAVU, SIYAMKANDAM, PULIKKAL P.O.,
MALAPPURAM DISTRICT.

6. ALUNGAL SULAIKHA, W/O.ALI MASTER, KULATHOOR,
POST LTHURAKKAL, VIA. KONDOTTY, MALAPPURAM DIST.

7. KOLLOLI AYHAMMEDKUTTY, S/O.LATE ABDULLAKOYA,
SIYAMKANDAM, PULIKKAL P.O., MALAPPURAM.

8. KOLLOLI FASEELA, W/O.KOLLOLI AHAMMEDKUTTY,
SIYAMKANDAM, PULIKKAL P.O., MALAPPURAM.

9. P.NISAR, S/O.KOYAKUTTY, CHERUKAVU, PULICKAL,
KONDOTTY, MALAPPURAM DIST.

(ADDL.R5 TO R8 ARE IMPLEADED AS PER ORDER DTD. 31/10/2007 IN I.A.NO.9016/05)

(ADDL.R9 IS IMPLEADED AS PER ORDER DTD. 31/10/2007 IN I.A.12753/2007)

R1 TO R3 BY GOVT.PLEADER SRI V.T.K. MOHANAN

R4 BY ADV. SRI.T.KRISHNAN UNNI
GOVERNMENT PLEADER
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.12919/2005

ORDER ON IA.NOS.8409/05 & 9017/07 IN WPC.12919/2005

Dismissed

Sd/- P.R.RAMAN, JUDGE.

31/10/2007 Sd/- V.K.MOHANAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE JUDGMENT DTD.19/3/2005 PASSED BY THE SUB COURT, TIRUR.

EXT.P2 TRUE COPY OF THE PETITION DTD. 16/4/2005 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE LAWYER NOTICE DTD. 6/4/2005.

EXT.P4 TRUE COPY OF THE PETITION NO.B3/009857/05 DTD.5/4/2005 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION.

EXT.P5 TRUE COPY OF THE TREASURY RECEIPT DTD. 15/6/2005.

P.R.RAMAN & V.K.MOHANAN, JJ.

W.P.(C)NOS.12919 & 33322 OF 2005

Dated this the 31st day of October, 2007

JUDGMENT

Raman, J.

Petitioner in W.P.(C).No.12919/2005 is the plaintiff in O.S.No.67/2002, the suit for specific performance of contract for sale of the school by name, A.L.P. School, Cherukavu with land and building along with the right of management of the school. The suit was eventually decreed with direction. There was a Regular First Appeal (RFA.532/2005) before this Court at the instance of defendants 1 and 2, which we have already heard along with this writ petition and the same has been dismissed as per judgment dated 30/10/2007. When this writ petition came up for consideration before the learned Single Judge, the same was posted along with R.F.A. as above and heard.

2. W.P.(C).No.12919/2005 is filed for a writ of mandamus commanding respondents 2 and 3 to remove the 4th respondent from functioning as the Manager of the A.L.P. School, Cherukavu and to direct the 4th respondent not to effect any appointments in the school or to take any policy decision or to take any other action functioning as

Manager of the School and for a further direction commanding the 2nd respondent to approve the change of ownership and change of management of the school in favour of the petitioner and also to set aside the proceedings of the 2nd respondent approving the 4th respondent as Manager as per proceedings dated 7/6/2001 with effect from 20/11/1995 to 20/11/2005.

3. According to the petitioner, pursuant to the agreement for sale of the school with the right of management between the petitioner and the defendants in O.S.No.67/2002, possession of the school was given to him. However, the school was functioning without any approved Manager for quite long time. The 4th respondent had applied for the change of Managership, which was eventually approved by the Education Department. According to the petitioner, as per the provisions contained in Rule 3(2) of Chapter III of the Kerala Education Rules, in the case of aided institution under the individual management the individual proprietor may be the Manager and when the school property was transferred with the change of management under Rule 5(A) of Chapter III of the Kerala Education Rules, sanction is to be obtained from the 2nd respondent and in view of the agreement between the parties, the 4th

respondent has necessarily to make an application seeking such transfer of management in favour of the petitioner; but the 4th respondent is not willing to submit any such application. Hence, the petitioner submitted an application to effect change of management. The attempt of the 4th respondent is to usurp the function as Manager and thereby to make undue benefits by effecting appointments under the cover that he is the Manager of the school. It is further contended that in view of the civil court judgment (Ext.P1) produced in the case, the petitioner has become the rightful owner of the property and the mere pendency of an appeal will not change the character and nature of the decree unless the same is reversed. The 4th respondent has no right to act as Manager and the Educational Officers are bound to obey the directions. Placing reliance on Rule 5(A) of Chapter III of the Kerala Education Rules, it is contended that the Educational Authorities are bound to approve the transfer, in view of the civil court judgment and decree.

4. As could be seen from the prayers made in this writ petition, there is no specific prayer seeking any direction to the Educational Authorities to consider any application said to have been submitted by the petitioner. But the petitioner has sought for a writ of mandamus to set

aside the proceedings approving the 4th respondent as Manager for the period from 20/11/1995 to 20/11/2005. No writ of mandamus can be issued to set aside the proceedings and it can only be quashed in a writ of certiorari. But the proceedings as such is not produced. As such the relief to set aside such proceedings cannot be granted. The other reliefs are to remove the 4th respondent from functioning as the Manager. Admittedly, the 4th respondent was approved as the Manager, based on the application submitted by him. The school was originally belonged to one Madhavan Ezhuthachan from whom the 4th respondent and others purchased the school as a running concern. The right of management however was not transferred. In the meantime, Madhavan Ezhuthachan died. After obtaining necessary consent from the legal heirs of Madhavan Ezhuthachan, the application submitted was duly considered by the authorities for effecting transfer of management in favour of the 4th respondent, who was also the Manager. At the relevant time, the petitioner has not purchased the school and admittedly the petitioner entered into an agreement with the 4th respondent and others for purchase of the school as a running concern along with the right of management. Eventually the decree was passed in favour of the petitioner

as evidenced by Ext.P1. As per the judgment, execution of the sale deed is subject to the compliance of the provisions of Rule 5A of Chapter III of the Kerala Education Rules and there is also a direction to the 4th respondent herein, he being the Manager of the School at the time of passing the decree, to apply for necessary permission for the change of management in favour of the petitioner. Therefore, the 4th respondent was the Manager of the school even as on the date of passing the decree so recognised and accepted by the court below and confirmed by this Court. It is therefore for the 4th respondent to comply with the judgment failing which the petitioner should take necessary steps in this regard by approaching the court below. As the matter stands, the appointment of the 4th respondent as the Manager of the school prior to the passing of the decree cannot be validly assailed. In the result, the prayer for quashing the proceedings appointing the 4th respondent as the Manager, is refused. When the 4th respondent is recognised as the Manager, appropriate direction issued to him as per the decree to apply for transfer/change of management, because he being the existing Manager, has to make an application in accordance with the decree for transfer/change of management of the school in terms of the agreement. As respect the other

reliefs are concerned, so long as the 4th respondent was the Manager, he cannot be injuncted from making any appointment. The decree passed by the court below, being a specific performance decree, should be deemed as a preliminary decree passed in this case and it is always open to the parties to seek further directions in this regard. But since the decree now passed as such has not injuncted the 4th respondent from making any appointment, there cannot be any direction issued to the 4th respondent not to make any appointment, in this proceedings.

W.P.(C)No.12919/2005 is accordingly dismissed.

5. Petitioner in W.P.(C).No.33322/2005 was appointed as a Full Time Arabic Teacher from 15/6/2005 in a retirement vacancy in A.L.P. School, Cherukavu. He was appointed by the Manager, the 4th respondent. But his appointment was not approved because of the stay order passed by this Court not to accord approval, as evidenced by Ext.P1. Against that order passed by the Assistant Educational Officer, the Manager preferred an appeal (Ext.P2) before the District Educational Officer, Malappuram. Petitioner admits that there exists a dispute between the 4th respondent and Sri Abdul Azeez, the plaintiff in O.S.No.67/2002, which was eventually decreed in his favour and pending

in R.F.A. at that time. But still the petitioner did not make him as a party in this writ petition. However, he placed reliance on Ext.P3 and states that there was an order passed in I.A.NO.3316/2005 in R.F.A.No.532/2005 staying the operation of the decree for a period of two months and making it clear that the appellant shall not make any appointments of teaching or non-teaching staffs, either temporarily or permanently in the school till the appeal is over. The appellant in R.F.A.No.532/2005 is the 4th respondent herein. According to him, he was appointed as early as in 15/6/2005 and in W.P.(C).No.12919/2005 what was stayed was only the approval to be accorded based on the appointment if any made. Therefore, it is contended that there was no objection against the direction issued by this Court because the interim order passed in the writ petition only stayed the approval and the interim order passed in the R.F.A. is only subsequent to the appointment made to the petitioner. It is further contended that any dispute between the plaintiff in the suit and the 4th respondent herein shall not adversely affect his right or his appointment made on 15/6/2005. The petitioner prays to quash Ext.P1 and to issue an appropriate direction commanding the 3rd respondent-Assistant Educational Officer, Kondotty to approve the

appointment of the petitioner as Full Time Arabic Teacher from 15/6/2005. As the matter stands, Ext.P1 is no longer in force in view of the subsequent order dated 11th July, 2007 passed by the Division Bench directing the Assistant Educational Officer to approve the appointment of the petitioner in case the same is otherwise in order and in case the only objection is on the dispute on the management and the said order in effect has nullified the effect of Ext.P1 order. As such no further order quashing Ext.P1 need be granted. Subsequently, the petitioner's appointment has since been approved as per order dated 24/7/2007 produced as Ext.P7 along with I.A.No.10786/2007 in this writ petition. Subsequently, the petitioner filed I.A.No.11491/2007 for a direction to pay him salary. As per the order dated 10th September, 2007 in view of the disputes pending before this Court, it was directed that status quo be maintained. Even though it is contended by the additionally impleaded 5th respondent that the earlier order dated 11/7/2007passed by this Court to accord approval of the appointment already made, if it is otherwise in order, has since been suspended by a subsequent order dated 9/8/2007. But as already stated the approval was already accorded prior to the order dated 9/8/2007.

6. In view of our finding in W.P.(C).No.12919/2005, the

appointment of the petitioner herein by the Manager at the relevant point of time cannot be held to be illegal or without any basis. If so, the dispute between the parties in no way can affect the appointment to the vacancy which arose prior thereto. In the absence of any injunction order against the 4th respondent to make any further appointment and in the light of the specific direction contained in the decree passed by the court below directing the 4th respondent to make necessary application for change of management in favour of the additional 5th respondent and the execution of the document itself is subject to such transfer, it cannot be said that the appointment made by the 4th respondent is in any way illegal or contrary to the provisions of the Kerala Education Rules. Admittedly, at the time of appointment of the petitioner herein, the 4th respondent continued as the Manager of the School, as the application to the authorities is yet to be made in terms of the decree for transfer as per the K.E.R. In case there is any failure to comply with the decree, it is open to the petitioner to seek appropriate directions from the court below. But as of now there is no such order passed by the court below. In the circumstances, the appointment of the petitioner is validly made. In the result, the Educational Authorities shall pass appropriate orders disbursing

the salary to the petitioner based on the approval already granted.

W.P.(C).No.33322/2005 is thus allowed as above.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.